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Supreme Court, U.S.
FILED
MAY 9 1984
ALEXANDER L. STEVAS
CLERK

No. 83-6494

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THOMAS M. RETTIG

-VS-

THE KENT CITY SCHOOL DISTRICT, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF APPELLANT OPPOSING MOTION TO DISMISS OR AFFIRM

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For Plaintiff-Appellant
Thomas M. Rettig

INTRODUCTORY STATEMENT

The defendants-appellees have caused the filing in this Court of a document entitled "Brief of Respondents In Opposition To Petition For Certiorari." Appellant Thomas Rettig rejects the position taken by his school district and by his State. However, he realizes that this Court may entertain the document pursuant to its Rule 10.5. which states:

> The Court may permit an appellee, without filing a cross-appeal, to defend a judgment on any ground that the law and record permit and that would not expand the relief he has been granted.

The law and record clearly do not permit this extravaganza. Also, not hearing the appeal of Thomas Rettig would expand immensely the relief which Kent and the State of Ohio have been enjoying at great costs to Thomas Rettig. His pleas have been unheeded by all; he is clearly entitled to redress which must come in the form of compensatory education for the years and years of abuse and neglect. Further, the "Brief of Respondents" might conceivably be construed as a Motion to Dismiss or Affirm under Rule 16, including 1.(d):

> The Court will receive a motion to dismiss or affirm on any other ground the appellee wishes to present as a reason why the Court should not set the case for argument.

The appellees Kent City School District and State of Ohio Board of Education and their respective officials have filed their Brief which is taken to be their Motion to Dismiss and/or Affirm in accordance with Rule 16.4.

> Rule 16.5. provides: A brief opposing a motion to dismiss or affirm may be filed by any appellant, but distribution of the jurisdictional statement and consideration thereof by this Court will not be delayed pending the filing of any such brief.

This document is Thomas M. Rettig's Brief Opposing the Motion To Dismiss or Affirm which is dubbed "Brief of Respondents In Opposition To Petition For Certiorari."

On May 5, 1984, Thomas Rettig received a copy of a document entitled "Motion of Respondents to Dismiss or Affirm." The Brief being filed by Thomas Rettig at this time is also his Brief Opposing the Motion to Dismiss or Affirm. He is filing same under Rule 16.5.

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Exhibits Attached to this Brief:

1. General Docket U.S.C.A. (6) received by Rettigs on Jan. 27, 1984 ..... E--1

2. General Docket U.S.C.A. (6) received by Rettigs on March 14 , 1984 ..... E--2

3. Civil Docket U.S.D.C. (N.D. Ohio, E.D.) received by Rettigs on February 9, 1984 ..... E--3 (7 pages)

4. Correspondence, Feb. 16, 1984 U.S.C.A. to Rettig returning, as unfiled, the Motion by Thomas M. Rettig for a Rehearing E-4a

   Motion by Thomas M. Rettig for a Rehearing returned, as unfiled with attached Exhibits 1 - 5 .....E-4b (10 pages)

5. Rettig Notice to Clerk, U.S.C.A. (6) Nov. 8, 1981 that both Thomas and Eva would be unrepresented by an attorney; former Rettig atty. had been fired E-5a

   Pre-Argument Statement prepared by Rettig Atty. Kramer at time of filing Notice of Appeal to U.S.C.A. showing the Ohio Revised Code Chapter and the fed. statutes being cited in the appeal E-5b

6. Correspondence, May 5, 1984 Rettig to U.S.C.A., Office of the Clerk,requesting transmission of the administrative record as certified and filed in U.S.D. C. on 3/6/80 .....E--6

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OPINIONS AND JUDGMENTS BELOW

The Appellant provided this Court with legible copies of all of the opinions rendered below. They are located in the Jurisdictional Statement pursuant to Rule 15 of this Court:

The opinion of theDistrict Court is reported at 539 F.Supp. 768 and located in Appendix (I).

The opinion of the Court of Appeals for the Sixth Circuit is reported at 720 F.2d 463 and located in the form provided to the Rettigs in Appendix (I); as are all the other relevant orders found there.

The orders and opinions of the state-appointed hearing officer and subsequent state-level review are located in Appendix II - Administrative Agency Orders.

In addition to the exhibits contained in the various appendices to the Jurisdictional Statement, Thomas Rettig is attaching to his brief being filed at this time certain exhibits from the Sixth Circuit Court of Appeals which are provided to this Court for further illumination of the facts and grounds why this High Court should hear Thomas Rettig. This is the first time that his case has been separated from that of his mother's in the federal courts.

The Post-Trial Brief written for Thomas Rettig was not filed in time to have been considered by the Sixth Circuit Court. It was filed in the District Court on February 9, 1984. It is uncertain whether Judge Aldrich considered this brief in 1981 because she states at 539F.Supp.768 at page 776:

> This Court cannot speculate as to what procedures might have been followed had the exclusion process actually been pursued by the School District, nor can it speculate as to what standards for exclusion might have been applied...

The Rettig Post-Trial Brief had attached to it as an exhibit the Standards for Special Education governing Legal Dismissal From School Attendance. Yet Judge Aldrich did not address them. Instead of consulting them, she incorrectly placed the burden on the parents instead of on the school official(s) who refused to enroll the child repeatedly until April 1974 when Thomas was nearly nine years old. She did not consider the Ohio Statute which governed private placement of a child who had not been legally

excluded from public school attendance according to a proper determination of capacity of the child to benefit from special education.

The Rettig Brief filed with the Sixth Circuit on November 16, 1981 was accompanied by an Appendix which contained two documents that are publications of the Ohio Department of Education: The Standards for Special Education effective 1966 until their revision in 1973 (including the Standard for Legal Dismissal from School Attendance and the Standard for Slow Learning Children) together with the Ohio School Attendance Handbook which contains the relevant sections of chapter 3321. of the Revised Code of Ohio. A copy of this Brief is included with the JURISDICTIONAL STATEMENT in Appendix V(C). Appendix V(A) contains the verbatim text of these provisions.

Upon visiting the Sixth Circuit Court on January 27, 1984, the Rettigs learned that their Appendix to their Brief of Nov.16, 1981 had never been filed. It had been kept in the Clerk's Office all along; no Judge had looked at it. It should still be there now because it was never returned to the Rettigs. The Rettigs further learned that the exhibits introduced into the record at the local administrative hearing had never been transmitted to Cincinnati. The Sixth Circuit Court had never received any documents which are the exhibits from the Rettig appeal to the Ohio State Board of Education.(The JURISDICTIONAL STATEMENT Appendix V(B) contains the documents relating to the state level review).
The Rettigs had requested a copy of the docket sheet prior to the oral arguments of June 30, 1983. However, they were not provided a copy until their visit to the Court on January 27, 1984. This copy of the docket sheet is attached today as Exhibit 1 . The attention of this Court is directed to page 1 lower right hand corner which lists "15 vol exhibits." On March 14, 1984 the Rettigs secured another copy of the docket sheet from the Sixth Circuit. It is Exhibit 2 and attached to this brief. The lower right hand corner now reads "Certified record &
15 vol exhibits +
1 bx of exhibits
returned to D. Ct.
2/15/84"

Yet on the visit to the Court on January 27, 1984 there was no trace of a record, let alone the actual documents, of these vital parts of the record on appeal which incriminates both the District and the State of Ohio Board of Education. These documents prove beyond any doubt that the Ohio statutes have been a part of this lawsuit all along the long road to the Supreme Court of the U.S.

A visit to the District Court in Cleveland by Eva Rettig disclosed that an attorney for the KentCity School District had removed all of these exhibits after another Kent attorney of the same firm had corresponded on the subject with a clerk of the Cincinnati Court. It must be pointed out that a thorough search for these documents was conducted at both courts; they were not found. Eva Rettig complained to both Courts. However, nothing was done by either Court because the Mandate had issued from Cincinnati and some other verbal response from Cleveland. The certified docket sheet from Cleveland is attached as Exhibit 3 of this brief. Item #19 on this sheet indicates that the administrative record was stored in a "Box of records in exhibit room) 2nd floor." However, on February 9, 1984 all that could be found in the Court was in the basement files. The document concerning the removal of these exhibits - it must be stressed that the Rettig exhibits were removed without the knowledge of the Rettigs along with those of the hearing officer which includes the Waiver the Rettigs had to sign - was in the file and is Exhibit 4 to this brief.
In the presence of Eva Rettig, the bailiff of Judge Aldrich called the attorneys of the Kent City School District concerning the return of these exhibits which had been removed without Court permission: the form provides a blank to be filled with the signature of a Judge. It never was. See Exh. 4.b.(5) attached.
The exhibits miraculously turned up on Cincinnati's docket sheet of March 14, 1984. Unfortunately, no Judge in Cincinnati had seen them prior to the opinion and mandate.
Thomas Rettig was not represented by an attorney at the time of the State level review of the administrative hearing. Thomas Rettig was not represented by an attorney in the Sixth Circuit. See Exhibit 6 to this brief. The Sixth Circuit Court allowed Eva Rettig to represent herself. The former attorneys for the Rettigs

filed a brief as amicus on the issue of attorneys fees. This is the sole contribution to Thomas Rettig's parents case. Given the circumstances of this case where the vital exhibits were withheld from the appellate court, as reported above and documented with the attached exhibits to this brief, it is extremely doubtful that Thomas Rettig received any representation at all since the Sixth Circuit Court lists Eva Rettig as representing herself only. Not Thomas Rettig at all. Her case is still in Cincinnati since the Sixth Circuit Court determined that the issue was not ripe for its determination concerning financial matters.

It is the belief of Eva Rettig - she is no attorney, however, - that the Sixth Circuit Court of Appeals should have provided a rehearing to Thomas Rettig so that it could have been fair and just to him. He continues to suffer discrimination from his District and from his State. Judge Lambros has not intervened in the action pending in his Court since July 1983. Thomas is vegetating instead of learning vital life skills necessary for living without caretakers in an institutional setting when his parents are dead.

The school has no evaluation which justifies their actions and inactions concerning this human being. They are arbitrary and cruel and contrary to the procedural safeguards guaranteed to Thomas by laws of this State and this nation.

The Three-judge panel in Cuyahoga County Association For Children and Adults v. Essex (411 F.Supp 46 (N.D. Ohio 1976) upheld the Ohio scheme of educating handicapped children but ordered revisions of procedural safeguards. In the case of Thomas Rettig, not even the minimally required procedures were implemented by Kent; yet the State of Ohio Board of Education upheld Kent openly since 1979 concerning Thomas Rettig. A copy of 411 F.Supp. 46 is contained in the JURISDICTIONAL STATEMENT Appendix V(A). These same laws were part of the appeal to the Sixth Circuit. See Exhibits 5(a) and 5(b) attached to this brief. Their validity or constitutionality per se is not the issue. The issue is that they

were not implemented for Thomas Rettig. The issue is that no Court has bothered to verify the compliance with the laws which Kent and Ohio allege vis-a-vis Thomas Rettig specifically. The hearing officer ruled on preponderance of evidence. As did the Ohio State Board of Education. As did Judge Aldrich. The Sixth Circuit Court of Appeals did not check for compliance of any of the evaluations requests or the partial evaluation which was incomplete and in violation of Ohio special education law and in violation of the definitions and other statutory requirements of P.L. 93-380 and P.L.94.-142. The partially completed evaluation of 1976 was the basis, supposedly, of the IEPPs which Kent developed for Thomas Rettig in 1976, 77, 78, 79, 80. It is included in the JURISDICTIONAL STATEMENT Appendix V(D). However, the IEP for 1976 predates the date on the evaluation report. The evaluation report was not used in the development of either this IEP nor in the development of any subsequent IEP for Thomas Rettig. The recommendations contained in the report for close structure and teaching ratio of 1:1 were countered by Kent Schools with a multitude of field trips of the class of Thomas Rettig combined with all the other classes of handicapped children which the Kent City School District segregated in a ghetto it had created on the campus of Kent State University for its enrolled handicapped children. Examples of the field trips instead of systematic instruction are contained in the exhibits of the administrative record which were withheld from the Sixth Circuit Court of Appeals.

The Standards for Due Process and those for Multi-Factored Evaluation, Least Restrictive Placement, and Individualized Education Plan have all been violated consistently vis-a-vis Thomas Rettig. Also violated were their federal counterparts Part 121a.532 etc. and Part 84. 36. etc. Their verbatim text is found in the JURISDICTIONAL STATEMENT Appendix V(A).

The opinions and judgments below do not verify compliance with the requirements of these laws vis-a-vis Thomas Rettig.

Therefore, the Supreme Court must intervene and hear the appeal of Thomas Rettig. He is entitled to redress.

JURISDICTION

As stated above, the Appellant seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. 1254(2). The state statutes are contained in the JURISDICTIONAL STATEMENT Appendix V(A). The appellate Court which upheld chapters 3321 (compulsory attendance and legal determination of capacity of child to dismiss the child from compulsory attendance) and 3323 (special classes) and the Standards for Special Education as constitutional is the Three-Judge Panel constituted to hear the 1976 case against the Superintendent for Public Instruction of the State of Ohio Board of Education. In the Rettig case, the District Court quotes the Three-Judge Panel law suit as governing part of the Rettig case. Since the Sixth Circuit Court of Appeals upheld Judge Aldrich in most respects (the only exception cited is the remanded issue on extra-curricular activities) it follows that those two chapters are still deemed constitutional by the appellate Court in Ohio. The federal question which the Supreme Court is asked to address is that of due process and equal protection under the laws. The question is detailed in the JURISDICTIONAL STATEMENT and summarized there as well.

The issue of Jurisdiction in this Court is addressed in the JURISDICTIONAL STATEMENT on pages 30 to 36. Since the Rettig case involves the State of Ohio Board of Education as a party, the Supreme Court also has jurisdiction under 28 U.S.C.1251.

On page 2 of the "Brief of Respondents in Opposition", Mr. Whalen might mislead this Court concerning the purported directions from a deputy clerk to Eva Rettig, concerning procedures to secure an appeal. That letter is addressed to Eva Rettig and not to Thomas Rettig. It must be remembered that in the Cincinnati Court both are joined. Thomas Rettig is invoking the jurisdiction of the Supreme Court pursuant to 28 U.S.C.1254(2) in his appeal. The Constitution of theUnited States guarantees him due process and equal protection under the laws of Ohio and of this country. His school district and his State have violated his rights.

Thomas Rettig submits that the provisions of 28 U.S.C. 1254(2) are applicable to the present case. He filed a timely notice, and he perfected his appeal by docketing the case with the filing of his JURISDICTIONAL STATEMENT on March 29, 1984.

Mr. Whalen cites City of El Paso v. Simmons, 379 U.S.497,503 (1965). In pertinent part, page 447 (13 L ed 2d 446, 85 S Ct 577) states:

> 2. The provision in 28 USC 1254(2) that an appeal to the Supreme Court from a Federal Court of Appeals "shall preclude review by writ of certiorary at the instance of such appellant" means only that if an appeal is proper and has been taken, certiorary will not thereafter be available; where the appeal is not proper, the Supreme Court will still consider a timely application for certiorari.

The case is now before the Court pursuant to 28 USC 1254(2). The federal district court had original jurisdiction regardless of the amount in contraversy. The Sixth Circuit upheld the opinion of the District Court. The District Court considered the statutes of Ohio which were upheld by the Three-Judge Panel. In 1983 an appellate Court still found Ohio Revised Code chapters 3321 and 3323 constitutional as did an appellate Court in 1976. The same is true of their administrative code counterparts. They are valid and constitutional pro se. They are not being implemented vis-a-vis Thomas Rettig.

The Supreme Court should exercise its jurisdiction over this appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On page 3 of their Brief in Opposition, the Defendants cite one single statute in their defense, 20 USC 1401 et seq. together with an appendix containing a part of Education for the Handicapped Law Report reporduced by reduction to very small print in violation of the specific rule of this Court.

The attention of this Court is directed to the Jurisdictional Statement Appendix V(A) for the appropriate constitutional and statutory provisions involved in this case. In order to grant compensatory education to Thomas Rettig, more than one federal statute must be used as a basis for an opinion that is just and equitable.

Furthermore, it cannot be emphasized enough that Thomas Rettig, under Ohio laws for special education, has been eligible for proper public education since 1970 - based upon proper evaluation of his needs.

STATEMENT OF THE CASE

On page 4 of their brief in Opposition, the defendants address the IMPARTIAL DUE PROCESS HEARING. The JURISDICTIONAL STATEMENT contains the Rettig version on pages 38 through 40 as to STATEMENT OF THE CASE. The due process hearing is reason, in part, for invoking the jurisdiction of this Court and is discussed in the JURISDICTIONAL STATEMENT ON page 30 ff.

To summarize here, there was no due process hearing as is provided in 20 USC 1415 and in Part E of the implementing regulations of this statute. There was no due process hearing as is provided in Ohio Revised Code 3323.05 and its implementing Standard found in the JURISDICTIONAL STATEMENT Appendix V(A). The exhibits introduced at the so-called due process hearing were never seen by the Sixth Circuit Court because they had been removed from the District Court by the attorney for the Kent City School District.

See also JURISDICTIONAL STATEMENT Appendix II (Administrative Orders).

Also on page 4, they address the APPEAL TO STATE BOARD OF EDUCATION. The JURISDICTIONAL STATEMENT contains the Rettig position. The STATEMENT OF THE CASE relative to the state level review is found on pages 38 through 40. The total violation of the guaranteed rights of Thomas Rettig is grounds, in part, for invoking this Court's jurisdiction. Along with all of the exhibits, the Kent attorney removed every shred of evidence concerning the state level review from the District Court, as discussed above. The Cincinnati Court did not have this vital information at the time it was considering the case of Thomas Rettig. See the JURISDICTIONAL STATEMENT pp. 30 - 36. See also Exhibits 1, 2, 4, 5, 6, 7, 8 which are attached to this brief today.

There was no attorney involved on the side of the Rettigs at the time of the state level review.

The JURISDICTIONAL STATEMENT Appendix V(B) contains the documents concerning the State Level Review of the state-appointed independent hearing officer who was the law partner of Kenneth Cardinal's brother or cousin. Kenneth Cardinal is the former superintendent of Kent, a named defendant now replaced by Donna Lightel. What a miscarriage of justice!

It is most significant that this hearing officer found that at the time of placement of Thomas Rettig no evaluation was made of this student by the KentCity School District and, more impartantly than that, none was required. He disposes of the Ohio Statute 3323.011 which was in effect at the time Tom was enrolled in 1974 by stating it is not a statute. How ridiculous! His opinion flies in the face of the Revised Code and the Administrative Code of Ohio. Yet, the Ohio State Board of Education upheld this miscarriage and atrocity committed upon Thomas Rettig.
The Rettigs have ordered from the Clerk of the Sixth Circuit Court of Appeals the entire record constituting the administrative phase of this law suit. See Exhibit 6 attached hereto. This Court is urged to consider it fully.

On page 5 of their Brief in Opposition, the defendants discuss the US District Court Proceeding. They fail to mention, however, that they apparently hamstrung Judge Ann Aldrich who is herself the mother of a son with autism. The transcript of the proceedings before her contains a separately bound part specifically related to this issue raised by the defendants prior to her hearing the preliminary injunction request. The visit to the Cleveland Court in February 1984 disclosed that this part had never been seen by the Cincinnati Court either. Judge Aldrich, the defendants contended, would create a haven for people who had autism and would then bring her institutionalized son here from the East so that he could enjoy the benefits created by his mother. The Judge herself explained to the Rettigs what she was facing: if she did not disqualify herself in this case under their threat, she would run the risk of being sued by these powerful defendants. She had been on the bench only a very short time and did not want to subject herself to this type of harrassment. And she did not want to openly buckle under their threat either. She certainly would not be much of a judge if she did buckle under! However, it would have been much much better for Thomas Rettig if she had not been the judge of his mother and of his school district and state.
As stated elsewhere, it is imperative that this Court provide a ruling based upon 42 USC 1983 and/or some other federal statute and/or the appropriate Ohio statute under the federal questions.

The orders and opinions of the District Court are found in the JURISDICTIONAL STATEMENT Appendix I. The various attempts made by the Rettigs to move the District Court to intervene in behalf of Thomas Rettig are contained in the JURISDICTIONAL STATEMENT Appendix V(C).

It is important to note here that the Order made upon the Kent City School District by this Court in 1981 was completely violated by the District. The so-called multi-factored evaluation was in violation of 121a.532. It was the subject of another unsuccessful due process hearing and administrative state level review. It is being litigated in the Court of Judge Lambros in Cleveland.

The record shows that the parents not only gave permission to the Kent City School District in 1976 to conduct a psychological evaluation by the State, the parents requested the evaluations of other disciplines such as occupational therapy as well. This documentation is provided in the Jurisdictional Statement Appendix V(D). The administrative record shows that no other evaluation was requested by the Kent City School District that would have met the requirements of Standard 3301-51-18 or its federal counterparts 84.35 and 84.36; 121a.532. Under Ohio Statute R.C.O. 3323.05 and 33.23.08 the Kent City School District must have the permission of the Rettigs before it administers evaluations to Thomas. However, there is no provision that the District can opt for in its mandate to educate Thomas Rettig without a legally required evaluation as the basis for the education and related services it must provide him under the law. When the teachers or the parents request an evaluation, the District must provide it according to law. Since no permission to strip the child of the procedural safeguards to which he is entitled under law was forthcoming from the parents, the District was required to go the route of a due process hearing to override the refusal of the parents of their permission. It is not sufficient that the poor district keep trying to ask the parents and vegetate and retard the child who has the right to a free appropriate public education under State and federal laws.

Thomas never received any extra-curricular activities either. For Thomas, page five of the Brief in Opposition is empty straw.

On page 6 of their Brief In Opposition, the defendants argue their position concerning the Sixth Circuit Court of Appeals. The JURISDICTIONAL STATEMENT contains the position of the Rettigs. Pages 30 - 35.

The Sixth Circuit Court erred when it decided that the Kent City School District had provided a reasonably calculated individualized educational plan for Thomas Rettig. It is inconceivable how the District could have accomplished its mandate without the required multi-factored evaluation of Thomas Rettig. This Court is asked to consider the administrative record and the JURISDICTIONAL STATEMENT Appendix V(E) which contains the Report by Dr. Lou Brown and Dr. Alison Ford of their joint evaluation of Thomas and of the individualized educational program plans of the Kent City School District. All of the qualified experts who had personal knowledge of Thomas Rettig prescribe year-round instruction for him according to very specific instructions. The Kent City School District and the State Board of Education of Ohio did not produce a single qualified expert who had personal knowledge of Thomas Rettig. According to Ohio Special Education Standards, the Kent teachers are not qualified because they are not certified for autism or emotional disturbance by the Ohio State Board of Education. Even if they were not under the control of their employer Board of Education of the District, or of the State, they would not know how to design an appropriate individualized education plan for a student with autism to the degree the disability impacts upon Thomas Rettig. The testimony and written report of the Rettig experts clearly indicate that they (the Kent staff) are not even qualified to implement an appropriately designed program. And the program is flawed from the outset since it lacks a legal multi-factored evaluation of the specific needs which must be addressed in special education and related services individualized for Thomas Rettig.

The essence of the defendants' case is a plea for permission from this High Court to continue the vegetation and systematic retardation of Thomas Rettig which the District started in 1970 and has been continuing ever since. Since 1979 with the open support and aid of the Ohio State Board of Education.

On page 7 of their brief in Opposition, the defendants provide their Summary of Argument. It is the position of Thomas Rettig that the Kent City School District did not and does not now provide him with "personalised instruction with sufficient support services to permit the child to benefit educationally from the instruction."

The critical support service is the multi-factored evaluation conducted of Thomas Rettig by his District in strict compliance with 121a.532 and/or 84.35. The verbatim text is provided in the JURISDICTIONAL STATEMENT Appendix V(A).

This has never been done of Thomas Rettig by the Kent City School District. And the Kent City School District andthe State of Ohio refuse to consider the private evaluations and recommendations. Based upon this required multi-factored evaluation, there will be a number of critical services necessary to be provided by the District and by the State if Thomas Rettig is to escape institutionalisation when his parents are dead or otherwise unable to accomodate Thomas who will be nineteen years old on May 30, 1984. He is on SSI and has an apartment in which to learn the skills he needs to survive outside an instititution and without caretakers. What he needs is a teacher to provide him the ongoing systematic instruction his parents cannot provide him.

The defendants apparently acknowledge their responsibility for formulating the education to be accorded to Thomas Rettig (see page 7 of their Brief in Opposition) and their responsibility for choosing the educational method most suitable to the needs which he displays. However, they fall far short of this goal in the implementation of this philosophical aspiration vis-a-vis Thomas. The Court of Appeals did not apply the Standards of the Supreme Court when it disposed of the case of Thomas Rettig. The record clearly demonstrates that the District never consulted and implemented a legally required evaluation which is the mandate from the Congress and from the Ohio General Assembly. Without the evaluation as the basis, the remainder of the issues are suspect as well. The District is in no position to prove to any Court via certified records, etc. that it has ever provided Thomas Rettig with special education and related services which he needs based upon a legal evaluation done by qualified professionals

The Argument of the defendants is printed on pages 8-12 of their Brief in Opposition. It must fail when the actions and inactions of the District and the State of Ohio Board of Education involving Thomas Rettig are compared with the requirements of the laws of Ohio concerning special education, both Revised Code and Admin. C. They are reproduced in the JURISDICTIONAL STATEMENT Appendix V(A). Their argument must fail under the Federal Statutes, including those cited by the defendants, if justice is to be served upon Thomas Rettig. We are not asking for a white wash, as is the intent of the defendants. The objective is the justification to spend public funds, including locally raised revenue, state funds, and supplemental federal funds, to provide the free appropriate public education to which every citizen is entitled to Thomas Rettig based upon his needs. Neither the District nor the State are willing to provide him what he needs without a proper Court Order. Instead, they are causing the expenditure of enormous sums of money for legal costs while forcing him to become more and more functionally - and perhaps mentally- retarded as they waste his formative years. The child was referred to the Director of Child Study and Special Education fifteen years ago.

This Court is respectfully requested to review the entire record as it acts upon the JURISDICTIONAL STATEMENT. Rule 15 of this Court did not request any argument per se of Thomas Rettig. For this reason, in part, this Brief is being filed at this time.

The so-called individualized educational program plans never met the requirements of any Ohio Standards for Special Education governing any given aspect such as due process in determining eligibility for services individualized to the specific needs of Thomas Rettig concerning occupational therapy services, etc. The IEPPs are essentially unchanged for all the years being litigated here. Thomas has not benefitted educationally from his instruction. He performs more poorly now on standardized tests than when younger. More importantly, Thomas does not receive instruction in self-help skills like bathing, washing his clothes, preparing simple meals required by his diet as prescribed by his personal physician, clinical Allergist, Theron Randolph, M.D. (App. V(D)).

The record supports the Rettig contention that the State never complied with the procedures set forth in the Act (EHA). And, furhter, the IEP developed for Thomas Rettig by Kent is most certainly not reasonably calculated to enable Thomas Rettig to receive educational benefits. Since these requirements clearly remain unmet, the State has failed to comply with the obligations imposed by Congress. So far, the Courts have done nothing of substance for Thomas Rettig. But the Courts can and must do more. It is up to the Supreme Court to do it for Thomas Rettig.

On page 10, the defendants apparently attempt to misguide this Court with the quotations from the District Court and from the Appellate Court in this case. The District Court clearly states that no multi-factored evaluation of Thomas Rettig exists (see 539 F.Supp.768 (1981) page 777. The Court was unwilling to intervene for whatever reasons, including those relative to the threat made upon the Judge by the powerful defendants, must be the conclusion to be drawn. Judge Aldrich states on p. 779:

> On the basis of this record, the Court is unwilling to order a summer school program for Thomas Rettig. However, if on the basis of a multi-factored evaluation, a new IEP for Tom called for summer school, the Court would expect the Kent City School District to offer that program and would expect the State of Ohio to provide funding.

The issue concerning the vital occupational therapy necessary for Thomas is found at pages 780 and 781. The Court clearly expects O.T. for Thomas during the school year. The Court was not sure as to whether Thomas required it during the summer as well. The record shows, however, that Thomas Rettig received only evaluation in O.T. from the District; he never received actual, on-going therapy as prescribed by the occupational therapist from Akron Children's Hospital who met with Mr. Chrin and Tom's teacher in 1977 and who testified at the local hearing that occupational therapy was necessary on an ongoing year-round basis until no more therapy was necessary. Tom never received any O.T. even during the school year, let alone during any summer. He still needs to learn to manipulate fasteners on clothes as one example of O.T. necessary for him according to the professional prescriptions. The defendants are quoting Judge Aldrich out of context and this may be very misleading, and it may be to the detriment of Thomas.

The Appellate Court, of course, did not have the benefit of the Akron Children's Hospital evaluation and recommendations from the Occupational Therapist mentioned above. Those were taken from the District Court in October 1981.

The Appellate Court further misconstrued, it seems, the opinion of Judge Aldrich quoted on the previous page of this Brief. The Appellate Court had seen no evaluation of any kind of Thomas Rettig when it made the statement that the programs for summer and year-round occupational therapy were not necessary to permit Thomas to benefit from his instruction. They are not necessary in the eyes of the appellate Court only because the Court was not given the basis of the evaluations. The evaluations, however, clearly point to the need for year-round instruction in systematic special education and occupational therapy which are essential if Thomas is to escape institutionalization. None of the cases cited by the defendants are even similar to the case of Thomas Rettig.

It is clear that the decision of the Court of Appeals is fundamentally wrong, and that the result which it produced is detrimental to Thomas Rettig and violates the directives of this Court in Rowley. Accordingly, it must be corrected by this Court.

Thomas Rettig vehemently objects to the position of the cruel defendants that his life outside a warehouse for the feebleminded is not sufficiently important to warrant this Court's intervention. Thomas Rettig has come a long long way in his appeal to this Court. He was endowed by his Creator with ability sufficient to deal with life and work outside an institution and without primary caretakers, according to qualified professionals who are not under the control of the District or the State of Ohio. His impaired ability, however, dictates special education and related services which are specifically designed to meet his unique needs as documented in the record on appeal.

As to the purported difference in the recommendations of the Rettig experts, this Court should realize that the first set of experts testified to the events up until January 1979 and consider the years prior to that date. By the time the case reached the level of the District Court, Thomas had reached the age of sixteen and was still being provided pre-school pre-academic education

an no self-help skills instruction and programming necessary for him if he is to survive without a primary caretaker and an institutional setting. There has been no qualified expert who did not advocate appropriate year-round programming specifically for Thomas Rettig. The Rettig experts who testified at both levels of this litigation all personally knew the student. For example, Professor William Bricker of Kent State University first met the Rettig family in 1976 and regularly visited their home, and Tom, for the next five or six years or so. His health later declined; unfortunately, he has since died. His testimony is contained in the administrative record which is to be transmitted to this Court by the Cincinnati Court Clerk.

The defendants have placed their conclusion on page 12. This version must not be accepted by this Court because it goes against the manifest weight of the record and flies in the face of both State Statute for special education and Federal Statutes relevant to this case. It clearly violates the respective implementing Standards for Special Education of Ohio and their federal counterparts.

Thomas Rettig is before this Honorable High Court on appeal from the Sixth Circuit Court of Appeals and respectfully requests the appropriate relief of compensatory education be provided him by his District and by his State.

The mail man just now delivered a type-written copy of Motion Of Respondents To Dismiss Or Affirm wherein the defendants have substituted the term "Motion to Dismiss or Affirm" for the earlier term "Brief of Respondents in Opposition to Petition."

The foregoing Rettig Brief in Opposition to Motion to Dismiss or Affirm is deemed by Thomas Rettig to be his response to this latest pleading as well as to the previous one.

Respectfully submitted,

Eva O. Rettig

EVA O. RETTIG
586 Francis Street
Kent, OH 44240
(216) 678-0988

FOR THOMAS M. RETTIG

AFFIDAVIT OF SERVICE

A copy of the above Brief Opposing the Motion To Dismiss Or Affirm was served upon Dennis Whalen, 135 Portage Trail, P.O.Box 8, Cuyahoga Falls, Ohio 44222; and upon Gary Brown, Asst. Atty. General, State Office Tower, 30 E. Broad St., Columbus, OH 43215 by placing same in the regular U.S.Mail, postage prepaid, this sixth day of May 1984.

Eva O. Rettig
EVA O. RETTIG

Acknowledged before me on the 4th of May, 84
Rebecca S. Jolliff

REBECCA S. JOLLIFF
Notary Public, State of Ohio
My Commission Expires April 3 19[illegible]

Form A. O. 147 (July 1958)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

SIXTH CIRCUIT

APPEAL FROM: Northern District of Ohio, E.D. at Cleveland

CASE NO. 81-3581
81-3591

TITLE OF CASE	ATTORNEYS FOR APPELLANT Cross-Appellee
Thomas M. Rettig; Eva O. Rettig, Plaintiffs-Appellants, Cross-Appellees, vs. Kent City School District, Defendant-Appellee, Cross-Appellant, and Kenneth Cardinal, in his official capacity; Michael Chrin, in his official capacity; State Board of Education of Ohio; Franklin B. Walter, in his official capacity, Defendants-Appellees. (C.R.) Denial of education to handicapped	Edward G. Kramer Floyd J. Miller 240 Leader Building Cleveland, Ohio 44114 (216) 621-3377 Eva Rettig (Pro Se) 586 Francis Street Kent, Ohio 44240 (216) 678-0988 **ATTORNEYS FOR APPELLEE Cross-Appellant** Dennis M. Whalen G. Frederick Compton, Jr. Dennis M. Whalen Co., L.P.A. 135 Portage Trail, P.O. Box 8 Cuyahoga Falls, Ohio 44222 (216) 929-4291 Gary E. Brown Asst. Attorney General Ste.1613 State Office Tower 30 East Broad Street Columbus, Ohio 43215 (614) 466-8600

NO. BELOW: C79-2234

JUDGE BELOW: Aldrich

DATE OF JUDGMENT: August 25, 1981

NOTICE OF APPEAL FILED: September 22, 1981
October 6, 1981
G. Dixon

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
10/7/81	Fee Paid			
10/9/81	Fee Paid			
10/20/81				15 vol exhibits

E-1

Form A. O. 147 (July 1953)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

SIXTH CIRCUIT

APPEAL FROM

Northern District of Ohio, E.D. at Cleveland

CASE NO. 81-358
81-359

TITLE OF CASE	ATTORNEYS FOR APPELLANT Cross-Appellee
Thomas M. Rettig; Eva O. Rettig, Plaintiffs-Appellants, Cross-Appellees, vs. Kent City School District, Defendant-Appellee, Cross-Appellant, and Kenneth Cardinal, in his official capacity; Michael Chrin, in his official capacity; State Board of Education of Ohio; Franklin B. Walter, in his official capacity, Defendants-Appellees. (C.R.) Denial of education to handicapped	Edward G. Kramer Floyd J. Miller 240 Leader Building Cleveland, Ohio 44114 (216) 621-3377 Eva Rettig (Pro Se) 586 Francis Street Kent, Ohio 44240 (216) 678-0988 **ATTORNEYS FOR APPELLEE Cross-Appellant** Dennis M. Whalen G. Frederick Compton, Jr. Dennis M. Whalen Co., L.P.A. 135 Portage Trail, P.O. Box 8 Cuyahoga Falls, Ohio 44222 (216) 929-4291 Gary E. Brown Asst. Attorney General Ste.1613 State Office Tower 30 East Broad Street Columbus, Ohio 43215 (614) 466-8600

No. BELOW: C79-2234

JUDGE BELOW: Aldrich

DATE OF JUDGMENT: August 25, 1981

NOTICE OF APPEAL FILED: September 22, 1981
October 6, 1981
G. Dixon

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
10/7/81	Fee Paid			✓
10/9/81	Fee Paid			Certified record
10/20/81				15 vol exhibits +
				1 bx of exhibits
				returned to D. Ct
				2/15/84

E 2

DIST/OFFICE	DOCKET YR	DOCKET NUMBER	FILING DATE MO	DAY	YEAR	J	NOS	O	R	CL 23	DEMAND $	OTHER	JUDGE NUMBER	MAG. DEM	CASE NUMBER
0647 01	79	2234	11	30	79	3	440	1				Injunctive relief	4717		79 2234

3

PLAINTIFFS

RETTIG, Thomas M.
RETTIG, Eva O.

DEFENDANTS

1. KENT CITY SCHOOL DISTRICT
(2. CARDINAL, Kenneth, in his
(Official capacity
Per (3. CHRIN, Michael, in his
Amended (Official capacity
complaint (4. STATE BOARD OF EDUCATION OF
12-13-79 (OHIO
(5. WALTER, Franklin B., in his
Official capacity

By: Linda J. Payne
Deputy Clerk

CAUSE

20 U.S.C.,S 1401 et seq - denial of equality under Education of all handicapped children Act of 1975
29 U.S.C.S 794 - Denial of equal opportunity under Rehabilitation Act of 1973

ATTORNEYS

Edward G. Kramer (771-3399)
706 Citizens Bldg.
Cleveland,Ohio 44114

Floyd J. Miller
701 Citizens Bldg.
Cleveland,Ohio 44114
621-3377

McDOWALL & WHALEN
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Cuyahoga Falls, Ohio 44222

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Gary E. Brown & Richard W. Ross, Asst. Atty.General
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(614) 466-8600 43215

Sheridan Neimark
Nat'l Society for Autistic Children, Suite 1017
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Washington,D.C. 20005 (202) 783-0125

Dennis J.Murphy,Alan F. Berliner,CARLILE, PATCHEN,MURPHY & ALLISON. 100 E.Broad St. Columbus,Ohio 43215 (614) 228-6135
(Atty., for Ohio Assn for Protection)

E-3

Action arose at:
PORTAGE COUNTY

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID DATE	RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS CARD	DATE MAILED
				JS-5	11/30/79
				JS-6	AUG 31 1981

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/75)

JUDGE MANOS/ PETTIT, Thomas M., et al v.

PROCEEDINGS KENT CITY SCHOOL DISTRICT

11/30/79	1	COMPLAINT filed.
11/30/79	2	INITIAL ORDER filed. Manos, J.
11/30/79		SUMMONS issued. - copies of complaint, Initial Order and Summons to U.S.Marshal.
12/6/79	3	PRE-TRIAL ORDER filed. Manos, J.
12/13/79	4	AMENDED COMPLAINT filed. - Summons issued re: New Party Defts.
12/27/79	5	ANSWER of Deft., Kent City School District, filed. Copy mailed 12/26/79.
1/7/80	6	ANSWER of Deft., KENNETH CARDINAL to amended complaint filed. c/m 1/5/80
1/7/80	7	ANSWER of Deft., MICHAEL CHRIN to amended complaint filed. c/m 1/5/80
1/11/80	8	ANSWER of Deft., Franklin B. Walter and Deft., State Board of Education of Ohio to the amended complaint filed. c/m 1/8/80
1/16/80	9	LETTER re: Initial Order from counsel of Pltf. filed.
1/22/80	10	SUMMONS'(4) returned and filed. Served to: Franklin B. Walter on 12-19-79 by Certifed Mail; Kenneth Cardinal on 12-20-79 by Certified Mail; State Board of Education of OH. on 12-19-79 by Certified Mail; and Michael Chrin on 12-20-79 by Certified Mail. TOTAL FEES: $12.00
1/22/80	11	SUMMONS returned and filed. Served to Kent City School District on 12-6-79 by Certified Mail. FEES: $3.00
2/19/80	12	MOTION of Pltfs., for class certification, with memorandum in support filed. c/m 2/19/80
2/29/80	13	MOTION of The National Society for Autistic Children to file an Amicus Curiae Brief in support of class Certification,with brief in support filed. c/m 2/26/80
2/29/80	14	MOTION of The Ohio Assn. for Protection & Advocacy for leave to participate as Amicus Curiae,with memorandum in support filed. c/m 2/28/80 (Memorandum in support under separate cover received 2/29/80)
3/3/80	15	MEMORANDUM of Defts.,Kent City School Dist.,Cardinal & Chrin in response to pltf's motion for certification filed. c/m' 2/29/80
3/3/80	16	MOTION of Deft., Kent City School Dist. to dismiss/in limine with memorandum in support filed. c/m 2/29/80
3/3/80	17	MOTION of Defts., Kenneth Cardinal & Michael Chrin for summary Judgment, with memorandum in support filed. c/m 2/29/80
3/5/80	18	MEMORANDUM of Defts., State Board of Education of Ohio and Franklin B.Walter, State Supt. of Public Instruction, contra motion for class certification and partial motion to dismiss filed. c/m 3/3/80
3/6/80	19	CONVEYANCE OF Administrative Record by State of Ohio Board of Education & Franklin B.Walter,State Supt. of Public Instruction filed. - copies mailed 3/5/80 (Box of records in exhibit room) 2nd.floor.
3/10/80	20	MOTION of Deft., Kent City School Dist., for leave to file amended answer, with memorandum in support filed. c/m 3/7/80
3/10/80	21	MOTION of Deft., Michael Chrin for leave to file amended answer with memorandum in support filed. c/m 3/7/80
3/10/80	22	MOTION of Deft., Kenneth Cardinal for leave to file amended answer with memorandum in support filed. c/m 3/7/80
3/10/80	23	TRANSCRIPT of Administrative hearing to be filed with record of conveyance of Administrative record on 3/6/80 filed.

- continued on next sheet -

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.
RETTIG, Thomas M., et al	KENT CITY SCHOOL DISTRICT	C79-2234

DATE		PROCEEDINGS	Date Order or Judgement Note
3/12/80	24	ORDER granting the National Society of Autistic Children's motion for leave to file a brief in support of Class certification as Amicus Curiae filed. Manos,J.	
3/12/80	25	BRIEF of National Society of Autistic Children in support of class certification of Amicus Curiae,National Society for Autistic Children filed. c/m 2/26/80	
3/12/80	26	ORDER granting Ohio Assn.for Protection and Advocacy leave to file Memorandum as amicus curiae filed. Manos,J. - copies mailed	
3/12/80	27	MEMORANDUM of Ohio Assn. for Protection and Advocacy in support of motion for leave to participate as Amicus Curiae filed. c/m 2/28/80 leave	
3/17/80	28	ORDER granting deft. Kenneth Cardinal to file his Amended Answer filed. Manos,J.(3/17/80).	
3/17/80	29	ORDER granting deft. Kent City School District leave to file amended answer filed. Manos,J.(3/17/80).	
3/17/80	30	ORDER granting deft. Michael Chrin leave to file its amended answer filed. Manos,J.(3/17/80).	
3/17/80	31	AMENDED ANSWER of Michael Chrin filed. Copy mailed 3/7/80.	
3/17/80	32	AMENDED ANSWER of deft. Kenneth Cardinal filed. Copy mailed 3/7/80.	
3/17/80	33	AMENDED ANSWER of deft. Kent City School District filed. Copy mailed 3/7/80.	
3/17/80	34	MOTION of pltfs. for leave to file memorandums in opposition to several motions filed by defts filed. Copies mailed 3/14/80.	
3/24/80	35	MOTION of Defts.,State Board of Education of Ohio,etc. to strike Pltfs' reply brief, with memorandum in support filed. c/m 3/20/80	
3/24/80	36	MOTION of Defts.,Kent City School District,Kenneth Cardinal & Michael Chrin to strike, with memorandum in support filed. c/m 3/21/80	
3/24/80		ENDORSED Order granting motion of Pltfs., leave to file memorandums in opposition to several motions filed by defts., filed. Manos,J. - copies mailed.	
3/24/80	37	MEMORANDUM of Pltfs., in opposition to deft., Kent City School Dist.'s motion to dismiss in Limine filed.	
3/24/80	38	MEMORANDUM of Pltfs., in opposition to Defts'Cardinal and Chrin motion for summary Judgment filed.	
3/24/80	39	MEMORANDUM of Pltfs., in opposition to defts memoranda opposing class certification filed.	
5/22/80	40	ORDER assigning case to Judge Ann Aldrich. in compliance with the protocol establishing dockets for newly appointed Judges filed. Manos, J. copies to Kramer,Neimark,Murphy Berliner,Whalen & Gary E.Brown,Asst.Atty Gen.	
7/24/80	41	MOTION of Pltf. for TRO and preliminary injunction filed. c/m 7/24/80.	
7/24/80	42	MEMORANDUM in support of motion for TRO and preliminary injunction filed. c/m 7/24/80.	
7/31/80	43	PROPOSED Preliminary Injunction of Pltf. wiht findings of fact and conclusions of law filed. c/m 7/31/80.	

(O V E R)

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 79-2234
Thomas . Rettig	Kent City School District	PAGE ____ OF ____

DATE		PROCEEDINGS	Date Order or Judgement No
8/1/80	44	WRITTEN Objection to hearing on motion for preliminary injunction filed.c/m 8/1/80	
8/1/80	45	MEMORANDUM of Deft. in opposition to Pltfs. motion for preliminary injunction filed. c/m 8/1/80	
8/1/80	46	PROPOSED FINDINGS of Fact and conclusions of Law by Deft. Kent City School District filed.c/m 8/1/80.	
8/1/80	47	CIVIL SUBPOENA to Produce by Pltf. returned and filed. Served Michael Chrin on 7/30/80 Fees $44.00.	
8/4/80	48	VERIFICATION of Allegations of Complaint by Pltf. Eva Rettig filed.	
8/4/80	49	MINUTES of Proceedings filed. Evidence of Pltf. begun,Hrg. on motion for preliminary injunction,Adjourned until 9:30 a.m. Aldrich,J.	
8/8/80	50	MOTION of Pltf. for leave to file attached memorandum clarifying Pltfs. position on class certification with memorandum in support filed. c/m 8/8/80.	
8/7/80	51	MINUTES OF PROCEEDINGS filed. Status hearing set 9/17/80;preliminary injunction denied .Final arguments,oral opinion . Aldrich,J.	
8/11/80	52	MOTION of Pltf. for leave to substitute pages in Pltfs. memorandum clarifying Pltfs. position on class Certification with memorandum in support c/m 8/11/80.	
8/11/80		ENDORSED Order Granting Pltfs. motion to clarify position on class certification with ten days permitted to defts for response pleading filed. c/issued.	
8/12/80	53	ORDER that Pltfs. motion for preliminary injunction is DENIED ;Further that the Court Oral Opinion is adopted as findings of fact and conclusions of law in accordance with rule 53 filed. Aldrich,J. C/issued.	
8/12/80		ENDORSED Order Granting Pltf.leave to substitute pages in Pltfs memorandum clarifying position on class certification filed. Aldrich,J. c/issued.	
8/25/80	54	MEMORANDUM of Deft. Kenneth Cardinal in opposition to Pltfs. memorandum clarifying position on class certification filed. c/m 8/22/80.	
8/29/80	55	MEMORANDUM of Deft. State of Ohio in opposition to Pltf memorandum clarifying Pltfs. position on class certification filed. c/ to counsel	
9/9/80	56	TRANSCRIPT of Proceedings Before Judge Aldrich on 8/7/80 filed. Kaleta,r.	
9/9/80	57	TRANSCRIPT of Proceedings Before Judge Aldrich on 8/4/80 filed. Kaleta,r.	
9/11/80	58	MEMORANDUM of Deft. State Board of Education in opposition to motion for class certification filed. c/m 9/9/80	
9/15/80	59	MEMORANDUM & ORDER Denying Pltfs. motin for class certification; motion to dismiss of Deft. Kent City School District and State Board of Education and Defts. Cardinal and Chrin's motion for summary judgment are Denied. filed. Aldrich,J. c/issued.	
9/18/80	60	MOTION of Deft. Kent Schools to strike or expunge from the record Letter dated 9/8/80 sent by Pltfs. counsel to Deft. counsel with memo in support filed. c/m 9/16/80	
9/19/80	61	MINUTES of Pre-Trial proceedings filed. Court recommends 3 person panel of experts in autistic field. Defts. to submit to Pltf. by 9/29/80 a report and the experts. Response of pltfs. due 10/3/80 Status hearing on 10/8/80.Aldrich,J.	
11/12/80	62	MOTION of Pltf. requesting court to issue pre-trial order to setna discovery schedule and to set a date for trial on the merits filed. c/m 11/12/80	

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 79-2234
Thomas M. Rettig et al	Kent City School District	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
2/20/81	63	NOTICE of Appearance of counsel Floyd J. Miller as counsel for pltf. filed. c/m 2/19/81
3/6/81	64	MOTION of Pltf. for production of documents and things and entry upon land for inspections and other purposes ,with memorandum in support filed. c/m 3/6/81
3/18/81	65	MEMORANDUM of Pltf. in opposition to pltfs. motion for production of documents filed. c/m 3/18/81
3/24/81	66	REPLY of Pltf. to defts. memorandum in opposition to motion for production of documents and things and entry upon land for inspection and other purposes filed. with affidavit in support c/m 3/23/81
3/25/81	67	ORDER DENYING pltfs. request for production of documentswith reasons 1-3 filed. Aldrich,J.(3/25/81) c/issued.
4/9/81	68	MOTION of American Civil Liberties for leave to file brief amicus curiae filed. c/m 4/9/81
4/9/81	69	MOTION of Deft. for discovery filed. c/m 4/9/81
4/10/81	70	MOTION of Pltf. to file second amended complaint filed. with memorandum in support.c/m 4/10/81
3/10/81	71	SUBMISSION of Pltf. pretrial Brief filed. c/m 4/10/81
4/13/81	72	MOTION of Pltf. for a visit by the court to the locus in quo which is necessary to clarify several factual issues in dispute relevant to the requirement of the least restrictive enviorment as itrelates to the education for all handicapped children filed. c/m 4/13/81
4/13/81	73	MOTION of Pltf. for leave to file a recently decided opinion 3/31/81 which is directly applicable to the case at bar filed. c/m 4/13/81
4/14/81	74	BRIEF of American Civil Libirties Union as Amicus Curaie filed. c/m 4/9/81
4/14/81		ENDORSED Order Granting ACLU leave to file breif as amicus curiae filed. c/m 4/9/81
4/14/81	75	MOTION of Pltf. to permit expert to observe Thomas Rettig's educational setting at Longcoy Elementary School filed. c/m 4/14/81
4/16/81	76	MEMORANDUM of Pltf. in opposition to defts. motion for discovery filed.c/m 4/15/81.
4/17/81	77	MEMORNADUM of deft. Kent City School District in opposition to Pltfs. motion to file a second amneded complaint filed. c/m 4/17/81
4/20/81	78	MEMORANDUM of Asst. Atty General Gary E. Brown contrato pltfs. motion for leave to file second amended complaint filed. c/m 4/17/81
4/21/81	79	MOTION of Pltf. for leave to file reply to defts. memorandum in opposition to pltfs. motion to file an amneded complaint filed.c/m 4/20/81 with letter and exhibits attached.
4/22/81	80	PRETRIAL Brief of Deft State Board of Education of Ohio & Franklin B. Walter superintendent of Public Instruction filed.
4/22/81		ENDORSED Order Granting motion of pltf. for leave to file reply brief to defts memorandum in opposition to pltfs. motion to file an amended complaint filed. Aldrich,J.c/issued (4/22/81)
4/24/81	81	MEMORANDUM and Order Granting in part and Denying in part pltfs. motion to amend complaint. Pltfs. motion to amend complaint to add a new cause is denied. Aldrich,J. c/issued (4/24/81)
4/28/81	82	SUMMONS retruned and filed. Served Dr. Franklin Walter,F Peter Gross,Samuel J. Bonham Jr. on 4/16/81 fees $11.64.
5/6/81	83	SUBPOENA returned and filed. Served Mildred Phillips,William Young, Dr.Donna Lightel.Timothy Griffin,Michael Chrin,Geraldine Irvin,Kathryn Salter,Kaye Workman and John R. Hill on 4/20/81 fees $23.18.

.VIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 79-2234
Thomas Rettig et al	Kent City School District et al	PAGE ___ OF ___ PAGE

DATE	NR.	PROCEEDINGS
4/29/81	84	MOTION of Pltf. for reconsideration filed. c/m 4/29/81
5/5/81	85	MINUTES of Pre-Trial proceedings filed. Trial to commence 5/6/81. Aldrich,J.
5/6/81	86	MINUTES of Proceedings filed. Pltfs. case begun. Aldrich,J. Dixon,r
5/7/81	87	MINUTES of Proceedings filed. Pltfs. case continued. Aldrich,J. Dixon,r.
5/6/81		ENDORSED Order Denying motion of pltf. for reconsiderationfiled. Aldrich,J. c/issued (5/6/81)
5/8/81	88	MINUTES of Proceedings filed. Pltfs. case concluded,Defts. case concluded. Aldrich,J. Dixon,r.
6/3/81	89	POST-TRIAL Brief of Defts., State Board of Education of Ohio & Franklin B. Walter Superintendent of Public Instruction filed. Copies mailed 6/1/81.
6/3/81	90	POST-TRIAL Brief of Deft., Kent City School District filed. Copy mailed 6/3/81.
6/3/81	91	PROFFER of trial exhibit by local Defts. filed. Copies mailed 6/3/81.
8/25/81	92	OPINION AND ORDER Filed. Aldrich, J. (See opinion/or judgment for details). Copies issued. (noted 8/26/81).
8/25/81	93	JUDGMENT on Decision by the Court rendered in favor of pltfs. in part and in favor of defts. in part: it is ordered and adjudged that the State def immediately revise its standard, 3301-5-16(D)(5)(b) so as to comply wit the Federal regulation; that the deft. School District conduct a multi-factored evaluation in strict compliance with 45 C.F.R. Section 121a.53 that evaluation will be incorporated in the new IEP to be formulated fo the 1981-1982 school year, the Rettigs & an expert of their choice may participate in the development of that IEP; that the Kent City School District provide at least one hour per week of extracurricular activiti for Thomas Rettig in accordance with the new IEP; that pltfs.' request deft. School District be ordered to continue to provide Thomas Rettig w a free education for 7 additional years from age 22 to 29 is denied; ea party shall bear their own counsel fees and costs; and further ordered that the court's opinion andorder filed on 8/25/81 is adopted as findin of fact and conclusions of law, in accordance with Rule 52, Fed. R. of Procedure, filed. Aldrich, J. Copies issued. (noted 8/26/81).
9/22/81	94	NOTICE OF APPEAL by pltf. re: 8/25/81 filed. Kramer, Miller, Brown, Whalen & USCA 9/22/81.
9/23/81	95	TRANSCRIPT of Proceedings had before Judge Aldrich commencing on 5/8/81 pages 1-72 (1vol.) filed. Dixon, r.
9/23/81	96	TRANSCRIPT of Proceedings had before Judge Aldrich commencing on 5/6/81 pages 1-394 (1 vol.) filed. Dixon, r.
10/05/81		CERTIFIED ORIGINAL Pleadings mailed to Clerk, USCA.
10/06/81		NOTICE OF CROSS APPEAL by Deft. re: 8/25/81 & 9/22/81, filed. c/m Whalen, Compton, Kramer, Brown & USCA 10/06/81
10/08/81		ACKNOWLEDGEMENT of Transmission form from USCA re: Appeal filed 9/22/81 case no. 81-3586 filed in USCA 10/07/81, filed.
10/16/81		Exhibits (15 vols. of Transcripts) mailed to Clerk, USCA.
10/19/81		Exhibits taken by R. Brent Minney atty. for Kent City Schools, filed.
10/30/81		ACKNOWLEDGEMENT of Transmission form from USCA re: Appeal filed 10/06/81 case no. 81-3595 filed in USCA 10/09/81, filed.
1/6/82		MOTION of pltf for intervention by Court, filed. c/m 1/5/82
1/22/82		RESPONSE of Kent City School Dist. to pltfs.' mot. for intervention, and Moti to strike the mot. for inervention filed. Copies mailed 1/21/81.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO C79-2234
Thoma M. Rettig, et al.	Kent City School District	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
2/1/82		RESPONSE of Pltf. to his school district's mot. to strike or to deny his petition for court intervention in his behalf filed. Copies mailed 1/28/82.
/23/82		ENDORSED ORDER Denying pltf.'s mot. for intervention by this Court for lack of jurisdiction; this Court's final judmt. of 8/25/81 has been appealed by both parties to 6th Circuit Court of Appeals filed. Aldrich, J. Copies issued. (noted 2/24/82).
1/23/84		MOTION of pltf. requesting transfer to its related Case No. C83-2881, filed. c/m 1/21/84. In. I/23/84).
2/9/84	97	POST-TRIAL Brief of pltf., filed. c/m (n. 2/9/84).
2/9/84		SUPPLEMENTAL Pleading No. 97 forwarded to Clerk, USCA by Clerk.
2/9/84		SUPPLEMENTAL Pleading No. 9 forwarded to Clerk, USCA by Clerk.
2/9/84		PRE-TRIAL Brief of Kent City School District, Kenneth Cardinal & Michael Chrin, filed.
1/26/84		MEMORANDUM & OPINION denying rehearing pursuant to remand from U.S.C.A., filed. Aldrich, J. Issued I/26/84. (r.
2/17/84		ALL EXHIBITS from U.S.C.A. returned & filed.
2/21/84		NOTICE of Appeal by deft, filed. inre: I/26/84. c/m Whalen, Compton, Jr., Kramer, Miller & USCA. (n. 2/22/84).
2/22/84		TRUE copy of Mandate from USCA affirming case in part, vacated in part & remand to the District Court not inconsistent with the opinion of this Court. Each party will bear his own costs on appeal, filed. Issued as Mandate: 2/15/84. Costs: None; No Costs Taxed. Lively, Chief Circuit Judge; Krupansky, Circuit Judge; Feikens, District Judge. Record Returned with entire transcripts on appeal. (n. 2/22/84). (11/8/83).
2/22/84		SLIP OPINION, filed.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

February 16, 1984

Ms. Eva O. Rettig
586 Francis Street
Kent, Ohio 44240

Re: Case Nos. 81-3586 and 81-3595
Thomas M. Rettig; Eva O. Rettig
vs. Kent City School District,
et al.
Dist. Ct. No. C79-2234

Dear Ms. Rettig:

I am returning herewith, as unfiled, the motion by Thomas M. Rettig for a rehearing.

Please be advised that the mandate of this Court was issued on February 15, 1984, pursuant to Rule 41(a), Federal Rules of Appellate Procedure. Therefore, this Court no longer has jurisdiction in this matter.

Very truly yours,

John P. Hehman, Clerk

Cathy Weber

By: (Mrs.)Cathy Weber
Deputy Clerk

Enclosures
cc:
Mr. Edward G. Kramer
Mr. Dennis M. Whalen
Mr. Gary E. Brown

E-4a

RECEIVED
FEB 16 1984
JOHN P. HEHMAN, C

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG Plaintiff-Appellant Cross-Appellee v. THE KENT CITY SCHOOL DISTRICT, Defendant-Appellee, Cross-Appellant, KENNETH CARDINAL, et al., Defendants-Appellees	Nos. 81-3586, 81-3595 BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge MOTION BY THOMAS M. RETTIG FOR A REHEARING

This Court has denied Eva Rettig a Rehearing. It has construed her letter of January 6, 1984 as a Motion for Reconsideration and has denied it as well. While she is writing the within Motion for a Rehearing, she is doing it in the stead and by the command of Thomas M. Rettig, imploring this Honorable Tribunal to provide him a Hearing based upon the entire Record beginning with the Independent Hearing Officer's Hearing which the State Board of Education provided him.

commencing on January 29, 1979, it concluded on April 4, 1979 after fourteen components constituting the hearing. (This independent hearing officer's hearing was provided to Thomas Rettig instead of the due process hearing to Eva Rettig which she had requested of the Kent City School District on February the last of 1978.) Exhibits 1, 2, 3 (attached) relate to this fact.

Section 3323.04 Revised Code of Ohio governed the hearing Thomas Rettig was given. Both Thomas Rettig and his mother appealed to the Ohio State Board of Education which involved a two-stage State level review of the appointed officer who was commissioned by the Ohio State Board of Education in the first place because Dennis Whalen requested this course of action for the Kent City School District and its employees. Neither the Kent City School District nor the State of Ohio provided a due process hearing to Eva Rettig, in violation of Federal and State law

E 4(6)

The procedure continued to the Federal District Court under the Education for All Handicapped Children Act of 1974 (P.L.93-380 as amended by P.L.94-142.) The District Court provided a review for the most part. It provided no appropriate relief to Thomas Rettig. The case continued on into the Sixth Circuit Court of Appeals.

However, the Sixth Circuit Court panel of judges never had the benefit of consulting the cumulative record because the record was never transmitted to Cincinnati. There is no trace of any of these exhibits constituting the administrative record (which Judge Aldrich was required to review) in Cincinnati, as learned by Eva Rettig on her recent visit to Cincinnati. Thus, the Honorable Three Judge Panel assigned to Thomas Rettig could not possibly have based its Judgment of November 6, 1983 upon the Record. Therefore, this Slip Opinion as written by Judge Krupansky is completely unfair to Thomas Rettig. This is why he should be provided a rehearing.

In March of 1980, Gary Brown provided for the "CONVEYANCE of Administrative Record by State of Ohio Board of Education and Franklin D. Walter, S.I. (Box of records in exhibit room) 2nd floor." (See number 19 on the Cleveland Docket Sheet). Number 23 on the same Docket Sheet is the "TRANSCRIPT of Administrative Hearing to be filed with record of conveyance of Administrative record on 3/6/80 filed." The Certified Record filed by Gary Brown in Cleveland consists of the following:

(1) Fourteen transcripts of those fourteen days of hearings held in Kent
(2) Rettig Exhibits Nos. 1 through 67 admitted into the record in Kent
(3) Kent City School District Exhibits admitted into the record in Kent (A-Z, AA-ZZ, AAA-HHH)
(4) IHO Exhibits 1 and 2
(5) 3 video tapes of the evaluation done by qualified Judevine Center (Autism professionals of Thomas Rettig just days prior to the hearing in Kent
(6) Report of the IHO and Post-Hearing briefs of the parties (this did not include Eva Rettig as a party)
(7) Proceeding at state level review
    (a) Correspondence
    (b) Proceedings before State Level Referee
    (c) Action taken by State Board of Education (State Board's Resolution and Order)
    (d) Report of the Referee
    (e) Objections to Referee's Report filed by Eva Rettig

None of these exhibits are in the Courts of either Cleveland or Cincinnati.

Eva Rettig personally searched both places looking for these exhibits; and for the exhibits that the Rettigs had asked Judge Aldrich to admit into the Record at the time she granted us a hearing on a TRO and PI; and at the time of the trial on the merits. The Three-Judge-Panel never saw any of these exhibits either. Neither did these Judges see the transcripts of the Hearing on the TRO. Yet they upheld Judge Aldrich. What basis does this judgment have then? A very important exhibit was the educational evaluation admitted into the record at the time of the TRO. The document never made it to Cincinnati from the information available. The Three-Judge-Panel never had an opportunity to read the very important testimony elicited in conjunction with this later evaluation because those transcripts were never transmitted to Cincinnati.

Attached as Exhibit 4 to this Motion is a copy of a letter Eva Rettig found in the old file in Cleveland. It shows that the local defendants' attorneys were told that these very documents were needed in Cincinnati and they were requested by Cincinnati as early as October 9, 1981. Please note that the Plaintiffs were kept in the dark: neither the Courts nor the defendants saw fit to inform them via a copy. In other words, all the Decisions the Cincinnati Court made since at least October 9, 1981 were not in compliance with the dictates of the record. This "oversight" - better called violatation of right to notice - is detrimental to Thomas Rettig who is completely helpless. Please provide him a rehearing.

Attached as Exhibit 5 to this Motion is a copy of a document filed with the Clerk of the District Court. It shows that an attorney for the Kent City School District dropped in on October 19, 1981 and took with him "ALL EXHIBITS." Please note that there is no signature of any District Judge; and it does not indicate when these legal documents are to be returned. Again, the Plaintiffs were not informed of this activity.

Thus, the defendants have removed from the Court not only the entire administrative record discussed above, they also have removed our two independent educational

evaluations demonstrating the need of Thomas Rettig for a different kind of evaluation from the one that Michael Chrin forced upon Thomas Rettig behind the Rettigs' back. The two evaluations demonstrate the need for programming to deal with autism and how this disability interrupts the already slow learning of this human being. Year-round programming is necessary based upon the information in the record.

Furthermore, the Thre-Judge-Panel never saw the Post Trial Brief which the Rettigs paid Edward Kramer to write in behalf of Thomas Rettig. Apparently, neither did Judge Aldrich see the Brief since it was never filed in Cleveland, and, therefore never transmitted to Cincinnati. This fact might explain why Judge Aldrich had no knowledge of the required procedures involving the illegal exclusion of Thomas Rettig from a class for slow learning children. Had she consulted this Brief (found by Eva Rettig in the basement files in Cleveland last Thursday), she would have seen the procedures together with the eligibility requirements for the placement of the young child into the class for slow learning children which Michael Chrin operated. They were attached as exhibits to the brief- ONLY to the ORIGINAL BRIEF, that is, which had not been filed with the Cleveland Court as of February 9, 1984. At my request, the Clerk of Courts said he would transmit the original of this Brief to Cincinnati that day. Please read and consider it together with the entire Record which has been kidnapped by the local defendents. Please order them to return each and every page of these documents necessary for a fair and just review by the Court now or by the Supreme Court later, if necessary.

Please have mercy on Thomas Rettig. He is not able to express these concerns in person. His mother promises to try to do what you require of her in behalf of Thomas.

Please provide a judicial review of the entire Record to Thomas Rettig whose question must be: HAS THE KENT CITY SCHOOL DISTRICT EVER PROVIDING ME A FREE

APPROPRIATE PUBLIC EDUCATION?

Should the State Board of Education have found that the Kent City School District was required to have had a legally required evaluation of me at the various periods of my school-aged life? They said no in 1979 on three occasions at least. Should Judge Aldrich have found that there has been no free appropriate public education for Thomas Rettig because there have been no appropriate evaluations used on Thomas and that this not only violates his statutory rights but also his right to due process under the United States Constitution? He should have been provided Notice, a Hearing, and an Appeals Procedure long before his mother demanded a due process hearing; should he not have?

Should the Sixth Circuit Court of Appeals find the Kent City School District out of compliance with the Federal and State laws?

Should Thomas Rettig be provided compensatory education? Who should pay for it? Should his parents be reimbursed for all the expenses they incurred? Clearly, these expenses are much more than support and maintenance of a child. Who should pay for these expenses? Thomas Rettig has not been taught by his school to do work for pay. He cannot now pay for anything. Will he be taught with the help of this High Court?

Will Thomas Rettig have to ask his mother to take his case to the Supreme Court of these United States because the Sixth Circuit Court of Appeals had no time for him? It found time for all the defendants; but not for the human child. So far.

PLEASE PROVIDE A REHEARING FOR THOMAS RETTIG.

Respectfully submitted,

Eva Rettig

Eva O. Rettig for Thomas M. Rettig
586 Francis St.
Kent, Ohio 44240

216 678-0288

I have mailed a copy each to the defendants and to the Amicus of this Court today. First class mail 2-14-84 Rettig

Board 978

The Kent Public Schools: Supt. of Instruction
President of the Board of Education

At the regular board meeting on Monday, Feb.27, 1978 I did formally, and in front of many witnesses, request an Impartial Due Process Hearing.

I had called the Asst. Supt. of Kent Schools on Feb.21, 1978 requesting my name be placed on the Agenda of the Board Meeting.

Why was my name not placed on the Agenda?

1. I hereby formally request again an impartial due process hearing regarding the provision of free appropriate education in the least restrictive placement of my son Thomas H. Kettig.

   I am dissatisfied with my son's education as it is presently provided.

2. I respectfully request a copy of each page and of every page, note, entry, etc. of <u>all</u> school records regarding my son. I am prepared to pay for the actual cost.

In view of the fact that I have been very reasonable and patient in reaching a final decision in the matter, I ask the Kent Schools to move as quickly as possible. The child is 13 years old and has needed more help from the time he was born with early infantile autism.

Thomas Kettig

INDEPENDENT HEARING OFFICER'S HEARING

- - -

In The Matter of:

THOMAS RETTIG

and

THE KENT CITY SCHOOL DISTRICT

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter held at the Kent City School District Board of Education Building, 321 North DePeyster Street, Kent, Ohio, before the Impartial Hearing Officer, David P. Freed, by appointment of the State Board of Education, and commencing on Wednesday, the 31st day of January, 1979, at 2:00 o'clock, p.m., at which time the following proceedings were had.

- - -

COURT REPORTERS, INC.
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ONE CASCADE PLAZA
AKRON, OHIO 44308
(216) 376-8100

SUITE 307
HOME SVGS. & LOAN BG
CANTON, OHIO 44702
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INDEX TO TRANSCRIPT OF PROCEEDINGS

VOLUME	DATE OF HEARING
1	January 29, 1979
2	January 30, 1979
3	January 31, 1979
4	February 21, 1979
5	February 22, 1979
6	February 23, 1979
7	February 27, 1979
8	February 28, 1979
9	March 2, 1979
10	March 6, 1979
11	March 7, 1979
12	March 13, 1979
13	April 3, 1979
14	April 4, 1979

3

LAW OFFICES
McDOWALL & WHALEN
P. O. BOX 8
135 PORTAGE TRAIL
CUYAHOGA FALLS, OHIO 44222

ROBERT H. McDOWALL CO., L.P.A.
DENNIS M. WHALEN CO., L.P.A.
JACK C. WHALEN
G. FREDERICK COMPTON, JR.
JEROME G. REIDY
R. BRENT MINNEY

TELEPHONE
(216) 929-4291

CABLE ADDRESS
"WHALE"

October 9, 1981

David Benik, Deputy Clerk
Clerk of Courts
United States District Court
Cleveland, OH 44114

Re: Thomas Rettig, et al v. Kent City School District, et al
District Court No. C79-2234
Court of Appeals No. 81-3586
Our File No. 132.22(A)

Dear Mr. Benik:

Today I spoke with Miss Kathy Preuitt, Deputy Clerk, of the United States Court of Appeals, Sixth Circuit, concerning the above-captioned matter. During the proceedings of the above-captioned matter in Judge Aldrich's Court, counsel and the Court referred to the administrative record that was filed with the Court as an exhibit. It is my understanding, after speaking with Judge Aldrich's Court, that the administrative record was not sent to Cincinnati as part of the record. Miss Preuitt suggested that I request that you transmit all of the administrative record and exhibits to Cincinnati. This is based upon the fact that the administrative record and exhibits contain evidence upon which the Court relied in rendering its decision. Please advise the undersigned when the transmission of the administrative record and exhibits has been accomplished.

Miss Preuitt suggested that if there is any question or problem that you contact her directly.

Your cooperation in this regard will be appreciated. If you have any questions or problems, feel free to contact me at your convenience.

Very truly yours,

DENNIS M. WHALEN CO., L.P.A.

G. Frederick Compton, Jr.

G. Frederick Compton, Jr.
Attorney at Law

GFC:bjc
cc: Miss Kathy Preuitt, Deputy Clerk
Dr. Donna G. Lightel, Superintendent

4

D. C. Form No. 22

No. C79-2234

United States District Court

NORTHERN DISTRICT OF OHIO

THOMAS RETTIG

vs.

KENT CITY SCHOOL DISTRICT

RECEIPT FOR FOLLOWING PAPERS

All Exhibits

FILED
OCT 19 AM 9 18
CLERK U.S. DIST. COURT
NORTHERN DISTRICT OF OHIO

The above papers taken from the files by

R. BRENT MINNEY

attorney for Kent City Schools

Dated Oct. 19, 1981

To be returned within _____ days.

Allowed:

_____
District Judge.

586 Francis Street
Kent, Ohio 44240

November 8, 1981

CERTIFIED MAIL RRR

Clerk
U.S. Court of Appeals for the Sixth Circuit
Cincinnati, Ohio

Re: Appeal from District Court
District Ct. Docket No.: 079-2239
Date filed in District Court: 11-30-79
Date Notice of Appeal Filed: 9-22-81
Date Pre-Argument Statement Filed: 10-16-81

Case Title in Full
Thomas M. Rettig
and
Eva O. Rettig, Plaintiffs

VERSUS
Defendants
(Kent City School District
(Donna Lightel, Supt. (present)
(Kenneth Cardinal, Supt. (former)
(Michael Ghrin, Dir. of Child
(Study and Special Education
State Board of Education of Ohio
Franklin B. Walter, SPI

Cross Appellants

Please be informed that Thomas M. Rettig and Eva O. Rettig will not be represented by counsel in the appeal filed on October 16, 1981 by Edward Kramer, Esq., former counsel for Plaintiffs.

Note also that the parents of Thomas M. Rettig intend to include in their argument chapter 3321. R.C.O. as well as P.L. 91-230, P.L. 93-380, P.L. 94-482 (Amendments to the Vocational Education Act of 1963)as referenced in Sec. 121a of Title 45), Sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706. These are in addition to those indicated by Mr. Kramer.

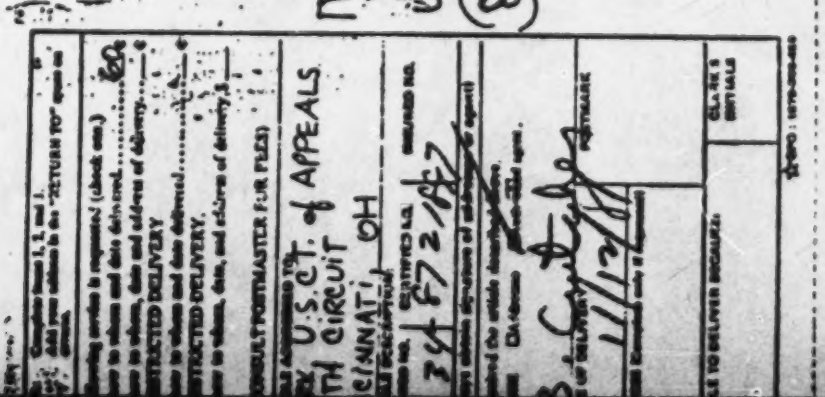
Please notify me immediately if my notice does not meet the requirements of the U.S. Court of Appeals for the Sixth Circuit. Needless to say, I am no attorney and I do not know "the ropes". Please advise.

Sincerely yours,

(Mrs.) Eva Rettig

CC by regular mail: Kent City School District Bd. of Education, c/o Clerk-Treasurer
Donna Lightel, Supt., Kent Public Schools
Michael Ghrin, Dir., Child Study and Special Education, Kent SS
State Bd. of Ed. of Ohio and Franklin B. Walter, SPI, c/o
F.B. Walter, Secretary of the Bd., and in his own capacity
CC by Certified Mail - RRR- Edward C. Kramer, Esq.

E-5(a)



NATURE OF SUIT
(Check as many as apply)

1. FEDERAL STATUTES

( ) ANTITRUST
( ) BANKRUPTCY
( ) BANKS & BANKING
(X) CIVIL RIGHTS
( ) COMMERCE, ROUTES, AND TARIFFS
( ) COMMODITIES
( ) COMMUNICATIONS
( ) CONSUMER PROTECTION
( ) COPYRIGHT ( ) PATENT OR ( ) TRADEMARK
( ) ELECTION
( ) ENERGY
( ) ENVIRONMENTAL
( ) FREEDOM OF INFORMATION
( ) IMMIGRATION
( ) LABOR
( ) OSHA
( ) SECURITIES
( ) SOCIAL SECURITY
( ) TAX
(X) OTHER (Specify): 20 U.S.C.§§1401 et seq., O.R.C. §§3323.01 et seq.

2. TORTS

( ) ADMIRALTY/MARITIME
( ) ASSAULT/DEFAMATION
( ) PRODUCT LIABILITY/ WARRANT
( ) DIVERSITY
( ) OTHER (Specify):

3. CONTRACTS

( ) ADMIRALTY/MARITIME
( ) ARBITRATION
( ) COMMERCIAL
( ) EMPLOYMENT
( ) INSURANCE
( ) NEGOTIABLE DISBURSEMENTS
( ) DIVERSITY
( ) OTHER (Specify):

4. PRISONER PETIT

( ) CIVIL RIGHTS
( ) HABEAS CORPUS (2254)
( ) MANDAMUS AND OTHER
( ) PAROLE
( ) VACATE SENTENC (2255)

5. OTHER

( ) FORFEITURE/ PENALTY
( ) REAL PROPERTY
( ) TREATY (Specif
( ) DIVERSITY
( ) OTHER (Specify

ISSUES PROPOSED TO BE RAISED ON APPEAL, INCLUDING JURISDICTIONAL CHALLENGES

The Trial Court erred by not granting compensatory education for failure of the Kent City School District to provide Thomas Rettig with an appropriate public education and wrongfully excluding him without the following of procedural safeguards mandated under the Fourteenth Amendment.

The Trial Court erred in not finding that the Kent City School District violated state law by its failure to provide a medical examination prior to Thomas Rettig's initial placement in a classroom.

The Trial Court erred in not ordering in-service training on effective methods of teaching for teachers, supervisory personnel and parents of Thomas Rettig, who has autism and retardation, as mandated by federal and state laws.

The Trial Court erred in not finding that the Kent City School District failed to provide an appropriate multidisciplinary and multi-factored evaluation to determine Thomas Rettig's individual educational needs as mandated by federal and state laws.

The Trial Court erred in not finding that the Individualized Education Programs (IEPs) prepared for Thomas Rettig for 1976-77, 1977-78, and 1978-79 did not meet the mandates of federal and state law.

The Trial Court erred in not finding that the Kent City School District violated federal and state requirement by failing to provide Thomas Rettig with an appropriate twelve-month special education and related services which would meet his unique needs.

The Trial Court erred in not finding that the Kent City School District violated federal and state requirement in undertaking evaluations of Thomas Rettig without prior notice or consent of his parents.

The Trial Court erred by placing the burden of proof improperly on the appellants rather than the appellees.

The Trial Court abused its discretion in not awarding attorneys' fees and costs to the appellants.

This is to certify that this civil appeal pre-argument statement was mailed the Clerk of the U.S. Court of Appeals for the Sixth Circuit and a copy proof served to each party or their counsel of record this 16th day of October, 1981.

(Signature of Counsel)

E-5(b)

586 Francis Street
Kent, Ohio 44240

May 5, 1984

CERTIFIED MAIL -RRR

Office of the Clerk
U.S.C.A. for the Sixth Circuit
Cincinnati, OH 45202

Re: 81-3586
81-3595
D.C. C79-2234

Rettig v. Kent City School Dis. et al.

Dear Clerk:

The above case has been appealed to the U.S. Supreme Court by Thomas M. Rettig under 28 U.S.C. 1254(2).

The Kent City School District et al. has filed a motion to Dismiss or Affirm. They contest jurisdiction on appeal.

It is imperative that the Supreme Court have at its direct and immediate disposal the entire ADMINISTRATIVE RECORD as certified and conveyed by the Ohio Department of Education to the U.S.D.C. in Cleveland on March 6, 1980. On the District Court Docket Sheet this ADMINISTRATIVE RECORD is item number 19.

You must also include item number 23 of that same Docket Sheet because the TRANSCRIPT is also required in Washington.

To describe the contents of the ADMINISTRATIVE RECORD more closely:

14 bound volumes of transcript of local hearing
1 bound volume of Decision of Hearing Officer

67 written documents as exhibits marked Rettig 1-67
60 written documents as exhibits marked Board of Education A - HHH
2 written documents marked Hearing Officer 1 and 2

Correspondence between Ohio Bd. of Ed. and Eva Rettig relating to the State Level Review

Brief of Rettig to Ohio State Bd. of Education
200 + pages of objections filed by Eva Rettig to report and recommendations of state referee

In short, everything relating to the case prior to the action in the District Court.

Sincerely yours,

Eva O. Rettig

EVA O. RETTIG
for Thomas M. Rettig, Appellant

CC Office of Clerk,
Supreme Court
Dennis Whalen
Gary Brown

E-6